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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1931.

No. 506.

AMERICAN TRADING COMPANY,

Petitioner,

vs.

H. E. HEACOCK CO.,

Respondent.

WM. A. ROGERS, LTD., AND AMERICAN TRADING COMPANY,

Petitioners,

vs. No. 507.

H. E. HEACOCK CO.,

Respondent.

BRIEF ON BEHALF OF H. E. HEACOCK CO., RESPONDENT, IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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TABLE OF CONTENTS.

	PAGE
STATEMENT	1
THE FACTS	2
FINDINGS OF FACT BY THE LOWER COURTS	3
COURT OF FIRST INSTANCE	3
SUPREME COURT OF THE PHILIPPINES	5
THE RIGHTS CLAIMED BY PETITIONERS	7
THE RESPONDENT'S RIGHTS	12
THE RIGHTS ASSERTED ON BEHALF OF PETITIONER, WM. A. ROGERS, LTD.	14
PETITIONER, WM. A. ROGERS, LTD., HAS DIVESTED ITSELF OF THE RIGHTS IT CLAIMS	15
CONCLUSION	17

APPENDIX.

CERTIFIED COPY OF RECORDS IN PATENT OFFICE OF ASSIGNMENT OF WM. A. ROGERS, LTD., TRADE-MARKS TO ONEIDA COMMUNITY, LTD.	21

TABLE OF CASES CITED.

	PAGE
American Steel Foundries v. *Robertson*, 269 U. S. 372, 381	11
Brownlow v. *Schwartz*, 261 U. S. 216, 217	16
Hanover Star Milling Co. v. *Metcalf*, 240 U. S. 403.	12
Heitmuller v. *Stokes*, 256 U. S. 359, 361	16
Little v. *Bowers*, 134 U. S. 547, 556	16
Mills v. *Green*, 159 U. S. 651, 653	16
United Drug Company v. *Theodore Rectanus Company*, 248 U. S. 95	9
United States Printing & Lithographing Co. v. *Griggs-Cooper & Co.*, 279 U. S. 156	10
Trade Mark Cases, 100 U. S. 82	8

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Statement.

This case, as we see it, resulted from an attempt of a merchant in Manila to appropriate unfairly the business built up by another Manila merchant, in the Philippine

Islands in the sale of silver plated ware. The controversy was purely local; it presents no question of public importance or general law. There was no difference of opinion between the court of first instance and the Supreme Court of the Philippine Islands. There was no dissenting opinion, except that one justice dissented on the denial of a petition for rehearing. The only trade concerned is that within the Islands, and, as we view the question, the only statute involved is the Philippine Act dealing with trademarks used in commerce in the Islands.

The Facts.

The case arose under the following facts:

The Respondent, H. E. Heacock Co., and its predecessor, have been in business in Manila since 1901, importing into the Philippine Islands plated tableware, silverware, flatware, and hollow-ware, manufactured in the United States by International Silver Company. This ware has always borne trademarks the essential feature of which is the word ROGERS. On June 27, 1918, under the provisions of the Philippine statute (Act No. 666), which permits the registration by a dealer of a trademark for use in commerce within the Islands, H. E. Heacock Company registered in the Philippine Bureau of Commerce and Industry a trademark consisting of the word ROGERS for silver plated table-ware (Rec., pp. 287, 288). Plated goods bearing this mark became widely and generally known in the Philippine Islands as the goods dealt in by The Heacock Company, due to the publicity and ad-

vertising given them by Respondent (Rec., pp. 288, 289, 290).

Twenty-five years after the word ROGERS had become well known in the Islands as indicating the silver plate dealt in by Respondent, Petitioner American Trading Company, began to import silver plated ware marked Wm. A. Rogers, made by Wm. A. Rogers, Ltd., a Canadian corporation, with the result, as found by the courts below, that the public in the Philippines were deceived into believing that plated ware marked Wm. A. Rogers was the ROGERS silver plate dealt in by the Heacock Company, and thus Respondent's business in ROGERS silverware was and was likely to be diverted from it to Petitioner.

Findings of Fact by the Lower Courts.

The court of first instance found the facts as follows (Rec. pp. 210, 211, 212):

> "That H. E. Heacock Co. was organized in the city of Manila in 1909, being the successor to the firm Heacock & Frier which was organized in the same city in 1901, and continued to do business from that time; that from 1901, H. E. Heacock Co., by itself and through its predecessors, imported into the Islands table and silver-plated goods for different uses (Silver-Ware, Flat-Ware & Hollow-Ware) bearing the factory trade-mark 'ROGERS', whereas the American Trading Co. imported goods of the same nature and for the same uses from 1924 or 1925 only; that on June 27, 1918, H. E. Heacock Co. registered in the Bureau of Commerce and Industry the trade-mark 'ROGERS', which was used in the disposal and sale in the

Philippines of table and silver-plated goods for different uses, for a period of about twenty years up to the present time (Exhibit 'G'); that the silver-plated goods sold by H. E. Heacock Co., bearing the trade-mark 'ROGERS' have almost the same appearance and design as the goods of the same metal which have been imported and sold by the American Trading Co. (Exhibits 'E' and 'F'); that the silver-plated goods for use in the table and for other purposes manufactured by the International Silver Corporation and imported into the Islands by H. E. Heacock Co. were known generally and in the Islands by their trademark 'ROGERS' and this trade-mark used in connection with said silver-plated goods have been known by the public as goods sold by H. E. Heacock Co.; that the said silver-plated goods with the trade-mark 'ROGERS' were notoriously known in the Philippine Islands due to the extensive propaganda and advertisement made by H. E. Heacock Co. which cost from forty thousand to fifty thousand pesos; that the silver-plated goods for use in the table and for other purposes imported into these Islands by H. E. Heacock Co. and by Wm. A. Rogers Ltd., and the American Trading Co., have the word 'ROGERS' with the addition of other words, figures or symbols indicating the different grades or qualities of the goods; that in the local market the word 'ROGERS' is the one generally known and sought for by the public which desires to buy silver-plated goods for the table and for other purposes, disregarding and over-looking completely the other words, figures and symbols appearing on the goods; that some of the dealers in silver-plated goods imported by Wm. Rogers, Ltd. and the American Trading Co. only make mention and call attention to the word 'ROGERS' appearing thereon, and in almost all cases the public entertained the convic-

tion and the belief, at least, that such silver-plated goods were the same as those which bore the trade-mark 'ROGERS' sold by H. E. Heacock Co.; that the American Trading Co., through it and as representative of Wm. A. Rogers Ltd., has succeeded in making a name in the market for the silver-plated goods which it imports and sells in the Philippines, thanks to the word 'ROGERS' engraved thereon, and, finally that H. E. Heacock Co. was informed of the importation of these silver-plated goods bearing the word 'ROGERS' by the American Trading Co. about the end of 1927 only."

The Supreme Court of the Philippines said (Rec., p. 291):

"The record is conclusive that covering a period of twenty-five years, through extensive advertising and the quality of the wares, the Heacock Company has built up and established a large and extensive business. That its only competitor in that line of goods is the defendant, American Trading Company, which appeared on the scene for the first time in 1925 with wares which are very similar to those imported and sold by the Heacock Company."

And again (Rec., p. 296):

"As stated, when Heacock Company first imported such wares into the Philippine Islands it was then a virgin country, and it must be admitted that any business standing or reputation which such wares had up to 1925 were those given to it by the advertising and business methods and dealings of that company."

Rec., p. 298:

"It must be conceded that in June, 1918, when Heacock Company applied for, and obtained the registration of, the word 'Rogers', it then had the right to the use of that trade-mark or trade-name, for the simple reason that it was the only person then dealing in 'Rogers' wares of any kind, and that Wm. A. Rogers, Ltd. or the American Trading Company did not appear on the scene until seven years later."

Rec., p. 299:

"In the final analysis, in June, 1918, Heacock Company duly registered here the word 'Rogers' as its trademark. At that time this was a virgin field for the wares evidenced by that trade-mark. Since then, through its advertising, business methods, and dealings, it has built up a growing and increasing market for the sale and purchase of such wares."

Rec., p. 301:

"Upon the facts we attach but little, if any importance to the use of the word 'Rogers' as a family name. In any event when Heacock Company applied for the registration of the word 'Rogers' it had the same legal right to the use of that word as Wm. A. Rogers, Ltd., and for seven years it has had the uninterrupted use of that word under that trade-mark, and in the ordinary course of business, stripped of all non-essentials, it must be conceded that in this line of wares, it is the word 'Rogers' which gives the business its intrinsic value, all of which was done by Heacock Company before the appellants ever entered the field."

In speaking of the deceptive effect of the sale of goods marked Wm. A. Rogers, the Supreme Court said (Rec., p. 296):

> "It is true that a dealer in such wares could and would see the distinction between them, but even so, in the ordinary course of business, the average public to whom they are sold could not and would not distinguish one from the other."

The courts below thereupon concluded that, as the name ROGERS in the Philippines had come to mean the goods dealt in by Respondent, and as Petitioner, long after this identifying meaning had been established, began to sell in the same market goods bearing a mark which was deceptively similar to the mark which Respondent had established, the Petitioner should be enjoined from selling in the Philippine Islands goods bearing such deceptive mark.

This, as it seems to us, is all that this case involves, and the attempt by Petitioners to dress it up with questions of supposed general and public interest is to import into it matters which in reality are absent.

The Rights Claimed by Petitioners.

It is asserted that the silver plated ware brought into the Philippines by Petitioner, the American Trading Company, was made by the other Petitioner, Wm. A. Rogers, Ltd., a Canadian corporation, and was marked with the name Wm. A. Rogers accompanied by other devices, that these marks were registered by Wm. A. Rogers,

Ltd., under the United States Trade-Mark Act of February 20, 1905. Petitioners say that this Act, according to its terms, extends to territories under the jurisdiction of the United States, that this includes the Philippine Islands, and therefore it is said that these registrations give to Wm. A. Rogers, Ltd., the right to use the marks in the Philippines and that, as the court below enjoined their use in the Philippines, it came into head-on collision with the Federal statute.

This argument, as we see it, loses sight of the nature of a trade-mark right and the effect of registration. The petition seems to proceed upon the theory that registration under the Federal Trade-Mark Act gives to the registrant a right of some kind like a patent or copyright—a right in gross. The exact contrary is the case. As Mr. Justice Miller said in the *Trade-Mark Cases*, 100 U. S. 82:

> "This property and the exclusive right to its use were not created by the Act of Congress, and do not now depend upon that Act for their enforcement. The whole system of trademark property and the civil remedies for its protection existed long anterior to the Act of Congress, and remain in full force since its passage.
>
> These propositions are so well understood as to need no citation of authorities or elaborate argument to prove them."

Petitioners in this case attempted to sell in the Philippines silver plate marked Wm. A. Rogers, twenty-five years after silver plate bearing the name Rogers was understood there to mean the goods dealt in by Respondent. Petitioners invoke registration under the Federal statute to project an

alleged trade-mark in advance of trade, and thus claim a right to dislodge Respondent, the prior occupant of the market, from its earned good will. This, under the decisions of this Court, cannot be done.

In *United Drug Company, Petnr. and Appt.* v. *Theodore Rectanus Company,* 248 U. S. 95, 63 L. Ed. 141, 146, Mr. Justice Pitney said:

> "Conceding everything that is claimed in behalf of the petitioner, the entire business conducted by Mrs. Regis and her firm prior to April, 1911, when petitioner acquired it, was confined to the New England states, with inconsiderable sales in New York, New Jersey, Canada, and Nova Scotia. There was nothing in all of this to give her any rights in Kentucky, where the principles of the common law obtain. Hunt *v.* Warnicke, Hardin (Ky.) 61, 62; Lathrop *v.* Commercial Bank, 8 Dana, 114, 121, 33 Am. Dec. 481; Ray *v.* Sweeney, 14 Bush, 1, 9, 29 Am. Rep. 388; Aetna Ins. Co. *v.* Com., 106 Ky. 864, 881, 45 L. R. A. 355, 51 S. W. 624; Nider *v.* Com., 140 Ky. 684, 687, 131 S. W. 1024, Ann. Cas. 1913 E, 1246. We are referred to no decision by the courts of that state, and have found none, that lays down any peculiar doctrine upon the subject of trademark law. There is some meager legislation, but none that affects this case (Ky. Stat. § 2572c, subsec. 7, §§ 4749-4755). There was nothing to prevent the state of Kentucky (saving, of course, what Congress might do within the range of its authority) from conferring affirmative rights upon Rectanus, exclusive in that commonwealth as against others whose use of the trademark there began at a later time than his; but whether he had such rights, or respondent now has them, is a question not presented by the record; there being no prayer for an injunction to restrain petitioner from using the mark in the competitive field.

It is not contended, nor is there ground for the contention, that registration of the Regis trademark under either the Massachusetts statute or the act of Congress, or both, had the effect of enlarging the rights of Mrs. Regis or of petitioner beyond what they would be under the common-law principles. Manifestly, the Massachusetts statute (Acts 1895, p. 519, chap. 462) could have no extraterritorial effect. And the Act of Congress of March 3, 1881 (chap. 138, 21 Stat. at L. 502), applied only to commerce with foreign nations or the Indian tribes, with either of which this case has nothing to do. See Ryder *v.* Holt, 128 U. S. 525, 32 L. Ed. 529, 9 Sup. Ct. Rep. 145. Nor is there any provision making registration equivalent to notice of rights claimed thereunder. The Act of February 20, 1905 (chap. 592, 33 Stat. at L. 724, Comp. Stat. 1916, § 9485), which took the place of the 1881 Act, while extending protection to trademarks used in interstate commerce, does not enlarge the effect of previous registrations, unless renewed under the provisions of its 12th section, which has not been done in this case; hence we need not consider whether anything in this act would aid the petitioner's case."

The effect of registration under the 1905 Act was later decided by this Court. In *United States Printing & Lithographing Co.* v. *Griggs-Cooper & Co.*, 279 U. S. 156, Mr. Justice Holmes, speaking of the Trade-Mark Act of 1905, said:

"The trial court found the facts to be as above stated and the supreme court held that the 'purpose and effect of the Trade-Mark Act of February 20, 1905, chap.

592, § 16, 33 Stat. at L. 728 (U. S. C. title 15, § 96) was to project the trade-mark rights of the registrant and owner thereof into all the states even in advance of the establishment of trade therein, and to afford full protection to such registrant and owner.' It affirmed a judgment for the plaintiff giving the relief prayed and a writ of certiorari was granted by this court.

* * * * * *

But neither authority nor the plain words of the act allow a remedy upon it for infringing a trademark registered under it, within the limits of a state and not affecting the commerce named. More obviously still it does not enlarge common-law rights within a state where the mark has not been used. General Baking Co. *v.* Gorman (C. C. A. 1st), 3 F. (2d) 891, 894."

In view of these decisions it seems unnecessary to discuss the question to which Petitioners devote so much attention, whether or not the Federal statutes providing for registration of trademarks extend to the Philippine Islands. It is of no consequence either way. These statutes do not enlarge common law rights.

The Federal Trade-mark statute is a practice act, dealing with procedure only and not with substantive rights in the Philippines or elsewhere. This must be so, for, as Mr. Justice Sutherland said in *American Steel Foundries* v. *Robertson*, 269 U. S. 372, 381:

"that body [Congress] has been given no power to legislate upon the substantive law of trademarks."

The Respondent's Rights.

The trade in the Philippines in silverware under the name ROGERS was built up by Respondent, and the word ROGERS there indicated silverware dealt in by Respondent. Respondent, a dealer, had a right to register the word as its trademark in the Philippines, under the express language of the Philippine statute.* It must not be forgotten that the rights asserted in this proceeding are the rights of *Respondent, H. E. Heacock Company, and no one else* (Rec. p. 450). And, regardless of registration under the Philippine statute, certainly Respondent was entitled to be protected against the invasion of its local good will by the use of a deceptive mark by Petitioner, the American Trading Company, a local competitor, whatever may have been the right of the manufacturer of the goods bearing the mark in the United States or elsewhere.

In *Hanover Star Milling Co.* v. *Metcalf*, 240 U. S. 403, where there was an invasion of an established local trade by the user of a trademark who might have a right to use it elsewhere, Mr. Justice Pitney discusses this question at page 420, saying (422):

> "* * * the words 'Tea Rose' in the flour trade in that territory meant flour of the Hanover Company's manufacture and nothing else. * * * But Metcalf's purpose to take advantage of the reputation of the Hanover Company's Tea Rose flour is so manifest, and the tendency of the similarity of the

*Act No. 666, March 6, 1903, as amended:

Sec. 2. Anyone who produces or deals in merchandise of any kind * * *

brand and accompanying design, and of the make-up of the packages, to mislead ultimate consumers, is so evident, that it seems to us a case of unfair competition is made out. The circumstances strongly indicate a fraudulent intent to palm off the Steeleville Tea Rose flour upon customers as being the same as the Tea Rose flour made by complainant, the reputation of which is shown to be so well established. The mere substitution of 'Steeleville' in the place of 'Hanover' on the labels is not convincing either that the intent is innocent or that the result will be innocuous, since it is accompanied with the words 'Tea Rose' (shown to have acquired a secondary meaning), and with the distinctive wrapping, both indicative in that market of complainant's flour. Complainant is thus shown to be entitled to an injunction against Metcalf, irrespective of its claim to affirmative trademark rights in that territory."

Relief always depends on the question of fact, whether there is false representation from the marks used by the parties, resulting in the passing off of the goods of one as and for those of the other. The Supreme Court of the Philippines found as a fact that the result of the use of the mark by Petitioner, American Trading Company, in the Philippine was to deceive the public into purchasing Petitioner's goods when they sought those dealt in by Respondent. This also is the necessary consequence of the fact that the goods dealt in by Respondent had been well known in the Islands for twenty-five years as "Rogers Silverware", before Petitioner, the American Trading Company, began to sell there the silverware of Petitioner, Wm. A. Rogers, Ltd., a Canadian company, which was stamped "Wm. A. Rogers".

Under these circumstances, the argument that the Federal statute applies to the Philippines gives this case a factitious appearance of general interest and public importance which in reality is quite lacking. The question is wholly irrelevant. The case, as we view it, presents merely a typical example of local unfair trading in the Philippines between two dealers in Manila. Petitioner, the American Trading Company, apparently was trying to appropriate the local trade of Respondent in "Rogers" Silverware by bringing into the Philippines goods bearing marks calculated to delude consumers in the Islands into the belief that goods so marked were those which Respondent had been selling for twenty-five years previously. This raid, which affected local conditions only, was properly stopped by the Philippine courts under the local law.

The Rights Asserted on Behalf of Petitioner, Wm. A. Rogers, Ltd.

What rights Wm. A. Rogers, Ltd. may have to use in the United States the mark "Wm. A. Rogers" on silverware, it is unnecessary to determine in this case. It may be mentioned in passing that these goods were offered in Manila, not as "Wm. A. Rogers" although bearing such marking, but as "Rogers" (Rec., pp. 63, 67, 71, 72, 78, 83-85). No attempt was made to distinguish.

Petitioner, Wm. A. Rogers, Ltd., Has Divested Itself of the Rights it Claims.

The petition, which was filed on or about November 6, 1931, alleges (p. 5):

> *"After the enactment of the Federal Trade-Mark Law of 1905,* the petitioner Wm. A. Rogers, Ltd. registered in the United States at different times between 1906 and 1917 (Exhibits 7, 8, 9, 10, and 11, R. 158-184), the following trade-marks (R. 11, 282):
>
> WM. A. ROGERS
> 1881 R ROGERS R
> W. R.
> WM. A. ROGERS (in old English script)
>
> and has since used and now owns them."

The assertion in the last line is quite at variance with the facts. Petitioner, Wm. A. Rogers, Ltd., now owns no trade-marks, registered or otherwise. The registered marks referred to at the record pages indicated are No. 54,731 (June 26, 1906), No. 115,395 (February 6, 1917), No. 97,079 (May 17, 1914), No. 68,369 (March 31, 1908), No. 69,548 (June 16, 1908). These were assigned on June 1, 1929, to the Oneida Community, Ltd., by an instrument in writing recorded in the Patent Office on July 9, 1929, in Liber A-140, page 495. A certified copy of this instrument is printed as an appendix to this brief.

The marks which Petitioner now claims to own, and to be entitled to use are respectively items (s), (n), (m), (i), and (b) in the schedule attached to the assignment by which Petitioner divested itself, two years and a half ago,

of all rights in them in the United States and, under the express language of the assignment, "its territories, dependencies, and possessions", which naturally includes the Philippines. Any cause of action which Petitioner, Wm. A. Rogers, Ltd., may conceivably have had has abated and the question as to its rights, if any, is moot under the rule frequently announced by this Court in such cases as,

Brownlow v. *Schwartz,* 261 U. S. 216, 217;
Heitmuller v. *Stokes,* 256 U. S. 359, 361;
Little v. *Bowers,* 134 U. S. 547, 556;
Mills v. *Green,* 159 U. S. 651, 653.

What rights the Oneida Community, Ltd., may have to use the marks claimed by Wm. A. Rogers, Ltd., are directly in issue now in proceedings between the International Silver Company, successor to the original Rogers, and Oneida Community, Ltd., the assignee of Wm. A. Rogers, Ltd., now pending in the District Court of the United States for the Northern District of New York. In that case the bill of complaint of International Silver Company, filed June 16, 1931, alleges:

> "10. On information and belief: Defendant (Oneida Community) asserts alleged rights to use the name Rogers arising out of an alleged purchase by it on or about July, 1929, of the business, good-will, and trademarks of a corporation then organized and existing under the laws of the Dominion of Canada, said Canadian corporation having the name Wm. A. Rogers, Limited. * * *"

Oneida Community, Ltd., met this averment by alleging:

> "10. Defendant denies each and every allegation contained in paragraph 10, except that it admits that it purchased and is the successor to the business, goodwill and trademarks of Wm. A. Rogers, Limited,"

in a counterclaim filed by Oneida Community in the same case and verified Sept. 4, 1931 (Par. 29) it is specifically alleged that the business of Wm. A. Rogers, Ltd. was purchased by Oneida Community, Ltd. in 1929.

There is, therefore, no occasion for this Court to issue a writ to determine the alleged rights of Petitioner, Wm. A. Rogers, Ltd., for two reasons:

(1) The case is moot because Petitioner has divested itself of them.

(2) Any such rights as Oneida Community may have are in issue and undetermined in a direct proceeding between it, the assignee of Wm. A. Rogers, Ltd. and the International Silver Company, in a court having jurisdiction of the parties.

Conclusion.

From the foregoing it will be seen that the reasons adduced in the petition for the grant of the writ are fanciful. Taking them up in their order:

1. The Petitioner asserts in its "Reasons for Granting the Writ" (p. 10) that if the Philippine Court's decision correctly states the law, the registration of trademarks in the United States is of no practical force or effect or

benefit for any purpose in the Philippine Islands. The short answer to this contention is that registration of a trademark under the United States Trade-Mark Act is of no practical force and effect either in the Philippines or elsewhere, in the absence of trade under the mark. These statutes are not creative of any rights; they are procedural merely. That registration confers no substantive rights is perfectly plain.

2. This "Reason" proceeds upon an assumption of fact which has no basis in the record. It assumes that the Respondent's registration of the word ROGERS in the Philippines was for the benefit and in behalf of the International Silver Company.

On Petition for Rehearing before the Supreme Court of the Philippines counsel for Petitioners asserted that

> "the registration of the alleged trademark was intended for the use and benefit of the applicant [Heacock] and not for the International Silver Company" (Rec. p. 325).

With this assertion counsel for the respondent Heacock agreed (Rec., p. 450).

The petition for rehearing was denied (Rec., p. 543). Thereafter Petitioner assigned as error in this Court the finding of the Supreme Court of the Philippine Islands that the registration by Respondent was for the use and benefit of International Silver Co. (No. 9, Rec., p. 548). Petitioner still relies on all errors assigned (Petition and Brief, p. 16). As the whole basis of the second reason assigned for the grant of the writ proceeds upon an erroneous

assumption of fact, the conclusions sought to be drawn need not be considered.

3. The third reason assigned is "whether a business concern in the United States—or for that matter a concern anywhere in the world—although aware of the registration of a trademark in the United States under the Federal law may in effect pirate such a trademark and debar its owner from using it in commerce with the Philippine Islands by a local registration of a generalized similar mark or name under the laws of the Islands". It is difficult to know what is meant by this statement unless it is assumed that the Respondent, Heacock Company, knew of the Federal registration of the alleged trademarks of Wm. A. Rogers, Ltd. There is no allegation of such knowledge in the complaint filed on behalf of Wm. A. Rogers, Ltd. (Rec., p. 10). No such point seems to have been raised before the court of first instance. No error was assigned on this question on appeal to the Supreme Court of the Philippines (Rec., p. 275 and following). It is clear that the Respondent, Heacock Company, had no knowledge of the fact of the registration in Washington of the Wm. A. Rogers, Ltd.'s alleged marks under the Federal statute. The Supreme Court of the Philippines says (Rec., p. 298):

> "How could Heacock Company in 1918 know that seven years later the American Trading Company or Wm. A. Rogers, Ltd. would appear on the scene, claiming the right to the use of the word 'Rogers' as a family name? How could it then know that Wm. A. Rogers, Ltd. had registered its trademarks in the United States Patent Office? The construction of this

section should be confined and limited to actual matters and things as they existed in 1918 when Heacock Company applied for, and obtained the registration of, the word 'Rogers'."

It seems to us that this quotation from the judgment of the Supreme Court is quite sufficient to dispose of the reasons given in paragraph No. 3 for the grant of the writ, both as a matter of law and as a matter of fact.

4. Paragraph 4 sets up as a reason for the grant of a writ the fallacious theory that the registration of a trademark gives the unrestricted right to sell goods bearing it. Registration under the Federal statute does not amount to a license to pirate an established business in the Philippines or anywhere else, by selling goods bearing marks which in fact deceive purchasers.

The only question which remained in this case after Wm. A. Rogers, Ltd., divested itself of every interest in the subject matter is whether a dealer in the Philippines who employs marks by which he trades on the established goodwill of another dealer, may justify his acts by showing that he obtained the ware thus marked from a manufacturer who had registered the marks in the United States.

Such a defense is unsound and raises no question of public importance.

We ask that the petition be denied.

Respectfully submitted,

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EDWARD S. ROGERS,
Counsel for Respondent.